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10/751,438	01/06/2004	W. Grady Fort II	DSY-107	2563

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EXAMINER

HAYES, BRET C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,438

Applicant(s)

FORT, W. GRADY

Examiner

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because line 1, "is disclosed" should be removed and reworded. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11 – 20, 29 and 31 – 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 11, line 2, "a reservoir" should be --the reservoir-- unless this is a reservoir other than the one recited in line 1, and "liquid" should be --water-- unless this is a liquid other than the water recited in line 1.
6. Claim 19, line 2, "liquid" should be --water-- unless this is a liquid other than the water recited in the base claim.

Art Unit: 3644

7. Claim 29, line 2 (2X), “liquid” should be --water-- unless this is a liquid other than the water recited in the base claim.
8. Claim 31, lines 8 and 10, “the apparatus” should be --the reservoir-- as it appears from the claim language at lines 8 and 9, “with the reservoir in one of an operating position and a refilling position,” that the reservoir can be set in either an operating or a refilling position and not the apparatus as recited.
9. Claim 33, line 2, “the apparatus” should be --the reservoir-- as above.
10. Claim 34, line 1, and “the apparatus” should be --the reservoir-- as above. Further, claim 34 is indefinite because it cannot be determined from the claim language: 1) how the lowering of the reservoir is accomplished; and, 2) how a lowering of the reservoir results in the claimed operating position and refilling position. In other words, lowered with respect to what?
11. Claim 36, line 1, “positions” should be --positioned--.
12. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1, 2, 6, 7, 11 – 14, 16, 17 and 31 – 34 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,195,463 to Lorenzana.

Art Unit: 3644

15. Re – claim 1, Lorenzana discloses the invention as claimed including a bird bath **10** comprising a coupling portion **70** and the basin portion **12** sized to accommodate at least one bird.
16. Re – claim 2, Lorenzana further discloses a channel **22** having an inlet and an outlet, best seen in Figs. 7 and 8a, for example.
17. Re – claim 6, Lorenzana further discloses a support portion **28**, located beneath the coupling portion **70** and the basin portion **12**.
18. Re – claim 7, Lorenzana further discloses the support portion **28** configured to receive a mounting post, set forth at col. 3, lines 10 – 25, for example.
19. Re – claims 11 and 12, see above claims.
20. Re – claim 13, Lorenzana further discloses the support portion **28** configured to rest on a flat surface, best seen in Figs. 7 and 8a, for example.
21. Re – claim 14, Lorenzana further discloses the basin portion **12** comprising a leg **40** connecting a bottom surface **34** of the basin portion **12** to the support portion **28**.
22. Re – claim 16, see claim 7 above.
23. Re – claim 17, Lorenzana further discloses the support portion **28** comprising a sleeve having a length about or greater than a radius or one-half of a thickness of the mounting post, see Figs. 7 and 8a, for example.
24. Re – claim 31, Lorenzana discloses the claimed invention as applied above, and further, the reservoir **68** comprising a first mating unit **70** and the coupling portion **18** comprising a second mating unit **20**.
25. Re – claim 32, see claim 1 above.

Art Unit: 3644

26. Re – claim 33, Lorenzana further discloses the reservoir 68 comprising a removable cap* and an opening*. Lorenzana discloses the use of a “common two liter plastic bottle” as the reservoir, col. 2, line 61, which would inherently include a removable cap and an opening.

27. Re – claim 34, Lorenzana further discloses the reservoir being lowered (as from a tree branch) to change the reservoir from the operating position to the refilling position.

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claims 4, 5, 8 – 10, 18, 20, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzana as applied above.

30. Re – claims 4, 5, 18 and 35, Lorenzana discloses the invention substantially as claimed as applied above except for the basin portion 12 including two or more (and thus four) basins. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lorenzana to include a plurality of basins, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

31. Re – claims 8 and 9, Lorenzana further discloses the support portion 28 comprising two legs 40, as outlined above. Regarding the second end of each leg configured to touch a surface on which the support portion 28 rests, the legs are so configured when resting upon sand, gravel, grass, etc. However, Lorenzana does not disclose four legs. It would have been obvious to one

Art Unit: 3644

having ordinary skill in the art at the time the invention was made to modify Lorenzana to include four legs, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

32. Re – claim 10, Lorenzana discloses the claimed invention as applied above except for the support portion comprising a rectangular sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lorenzana to include a rectangular sleeve, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

33. Re – claims 20 and 36, Lorenzana discloses the claimed invention except for the location of the obvious plurality of basins. It would have been obvious to one having ordinary skill in the art at the time the invention was made to so arrange a plurality of basins, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

34. Claim 3 rejected under 35 U.S.C. § 103 as being unpatentable over Lorenzana in view of US Patent No. 2,715,386 to Jones.

35. Lorenzana discloses the invention substantially as claimed as applied above. However, Lorenzana does not disclose the basin portion 12 comprising a rim having a cantilever. Jones teaches a rim 41 having a cantilever in same field of endeavor for the purpose of allowing any overflow of water to clear the seed platform below, see col. 2, lines 44 – 45. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify

Art Unit: 3644

Lorenzana to include a rim having a cantilever as taught by Jones in order to allow any overflow of water to fall freely.

36. Alternatively, claims 4, 5, 18, 20, 25 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzana in view of US Patent No. 5,743,212 to Forjohn.

37. Re – claims 4, 5, 18 and 25, Lorenzana discloses the invention substantially as claimed as applied above except for the basin portion **12** including two or more (and thus four) basins.

Forjohn teaches two or more (and thus four) basins, see Figs. 2 and 4 – 7, for example, in the same field of endeavor for the purpose of accommodating different species and sizes of birds. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lorenzana to include two or more (and thus four) basins as taught by Forjohn in order to accommodate a variety of different bird species and sizes.

38. Re – claims 20 and 36, see Figs. 4 and 6, respectively, for example.

39. Claims 15, 19, 21 – 30 and 37 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzana in view of to Forjohn.

40. Re – claim 15, Lorenzana in view of Forjohn discloses the claimed invention. Forjohn further teaches a removable plug on the basin portion, see claim 6, for example.

41. Re – claim 19 and 21 – 30, Lorenzana in view of Forjohn discloses the claimed invention.

42. Re – claims 37 – 39, Lorenzana in view of Forjohn discloses the claimed invention.

Forjohn teaches a support portion including a sleeve **23** and four legs **22**, the sleeve configured to receive a mounting post **10** and each of the four legs **22** connects each of the basins **25** to the sleeve **23**; the legs **22** configured to touch a surface on which the support portion rests; the four legs **22** configured to form an “X” pattern, see Fig. 6, for example.

Art Unit: 3644

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/12/04

A handwritten signature in black ink, appearing to read "Teri P. Luu". The signature is fluid and cursive, with the first name "Teri" being more prominent.

**TERI P. LUU
SUPERVISORY PRIMARY EXAMINER**